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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,220	07/07/2006	Tatsuo Tsutsui	P29489	2156
7055 7590 11/17/2008 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				
EXAMINER BOEWORTH, KAMI A				
ART UNIT 3767		PAPER NUMBER		
NOTIFICATION DATE 11/17/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

# Office Action Summary

**Application No.**

10/574,220

**Applicant(s)**

TSUTSUI, TATSUO

**Examiner**

KAMI A. BOSWORTH

**Art Unit**

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-6 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 31 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This office action is responsive to the amendment filed on 9/17/2008. As directed by the amendment: the abstract, specification, and claims 1-6 have been amended. Thus, claims 1-6 are presently pending in this application.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coccozza (US Pat 4,013,075) in view of Ohki et al. (US Pat 5,810,004).

5. Re claim 1, Coccozza discloses a device ("insufflator" best seen in Fig 9) to deliver a powdery medicine (Col 4, Lines 6-7) for nasal cavity to spray a powdery medicine filled in a capsule 13 (Fig 9) by loading the capsule between a connection port 37 (Fig 10) on a side of a nozzle 32 (Fig 10) to spray the powdery medicine into the

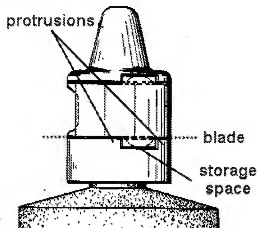
nasal cavity and a connection port 35 (Fig 10) on a side of a pump 33 (Fig 9) that supplies spray air to the nozzle (Col 4, Lines 23-25), the capsule being formed with a hole on each end (formed after cutting; Col 1, Lines 61-63) in communication with a respective one of the connection ports (Col 1, Lines 61-63) and supplying spray air from the pump through the inside of the capsule to the nozzle, a capsule holder 12 (Fig 15) that holds the capsule filled with the powdery medicine and is slidably movable in the longitudinal direction thereof (Col 3, Lines 18-20 and Lines 65-66), the capsule holder configured to position the capsule in a loading position between the connection port on the side of the nozzle and the connection port on the side of the pump (when capsule 13 is in line with cavities 35 and 37; Col 3, Lines 67-68), the capsule holder being movable forward and backward relative to the loading position of the capsule (Col 3, Lines 65-68); a cutter 20, 20' (Fig 13 and 14) that partially cuts off both ends of the capsule that moves forward to the loading position while being held by the capsule holder to make the holes on opposite ends of the capsule (Col 3, Lines 63-64), the cutter including a pair of blades 20, 20' (Fig 13 and 14) secured in parallel with each other (Col 3, Lines 30-44), each blade having a blade tip directed in a direction opposing the advancing direction of the capsule holder (Col 3, Lines 30-44; Fig 13 and 14); and a positioning guide 11 (Fig 11) located forwardly of the cutter to guide the ends of the capsule that moves forward to the loading position while being held by the capsule holder and causing the capsule to slide as far as a predetermined position (capsule holder 12 abuts protrusion 19 of the positioning guard 11; Col 3, Lines 24-27). Cocozza does not disclose that the peripheral portions of both of the connection ports

are formed as seal projections that project from surfaces of the blades toward the loading space; nor does Coccozza disclose that the distance between the seal projections is shorter than the length of the capsule after cutting off both ends by the cutter, so that both ends of the capsule loaded between them is pressed by both seal projections. Ohki et al., however, teaches a substantially similar device (best seen in Fig 4) having peripheral portions 9D, 20A (Fig 1) of connection ports 9, 20 (Fig 4) that are formed as seal projections that project from surfaces of the blades (Col 7, Lines 1-40) toward a loading space 13 (Fig 1); furthermore, Ohki et al. teaches that the distance between the seal projections is shorter than the length of capsule K (Fig 4) after cutting both ends by the cutter, so that both ends of the capsule loaded between them is pressed by both seal projections (Col 7, Lines 12-17) for the purpose of preparing the medicine for delivery to the patient (Col 7, Lines 37-40). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Coccozza to include peripheral portions that press the capsule, as taught by Ohki et al., for the purpose of preparing the medicine for delivery to the patient (Col 7, Lines 37-40).

6. Re claim 2, Coccozza discloses that the positioning guide includes a pair of protrusions (best seen in Fig A below) opposed to each other and a storage space 30 (Fig 4) is formed between blades and the protrusions placed on a side thereof for

discharging cut ends of the capsule cut off by the blades (Col 3, Lines 62-64).

## Fig A



7. Re claim 3, Coccozza discloses that the capsule holder is configured in the manner of a drawer (that moves in and out of a recess; Col 3, Lines 65-66) having a recessed groove 15 (Fig 15) to hold the capsule, and to move forward and backward relative to a loading position of the capsule (Col 3, Lines 65-66).
8. Re claim 4, Coccozza discloses a device ("insufflator" best seen in Fig 9) to deliver a powdery medicine (Col 4, Lines 6-7) for a nasal cavity to spray a powdery medicine filled in a capsule 13 (Fig 9) by loading the capsule between a connection port 37 (Fig 10) on a side of a nozzle 32 (Fig 10) to spray the powdery medicine into the nasal cavity and a connection port 35 (Fig 10) on a side of a pump 33 (Fig 9) that supplies spray air to the nozzle (Col 4, Lines 23-25), the capsule being formed with a hole on each end (formed after cutting; Col 1, Lines 61-63) in communication with a respective one of the connection ports (Col 1, Lines 61-63) and to receive spray air from the pump through the inside of the capsule to the nozzle, the device comprising: a

capsule holder 12 (Fig 15) that holds the capsule filled with the powdery medicine, the capsule holder being movable between the connection port on the side of the nozzle and the connection port on the side of the pump (when capsule 13 is in line with cavities 35 and 37; Col 3, Lines 81-20 and 65-68), the capsule holder being movable forward and backward relative to a loading position of the capsule (Col 3, Lines 65-68); a cutter 20, 20' (Fig 13 and 14) that partially cuts off both ends of the capsule that moves forward to the loading position while being held by the capsule holder to make the holes on opposite ends of the capsule (Col 3, Lines 63-64), the cutter includes a pair of blades 20, 20' (Fig 13 and 14) secured in parallel with each other (Col 3, Lines 30-44), each blade having a blade tip directed in a direction opposing the advancing direction of the capsule holder (Col 3, Lines 30-44; Fig 13 and 14). Coccozza does not disclose that the peripheral portions of both of the connection ports are formed as seal projections that project from surfaces of the blades toward the loading space; nor does Coccozza disclose that the distance between the seal projections is shorter than the length of the capsule after cutting off both ends by the cutter, so that both ends of the capsule loaded between them is pressed by both seal projections. Ohki et al., however, teaches a substantially similar device (best seen in Fig 4) having peripheral portions 9D, 20A (Fig 1) of connection ports 9, 20 (Fig 4) that are formed as seal projections that project from surfaces of the blades (Col 7, Lines 1-40) toward a loading space 13 (Fig 1); furthermore, Ohki et al. teaches that the distance between the seal projections is shorter than the length of capsule K (Fig 4) after cutting both ends by the cutter, so that both ends of the capsule loaded between them is pressed by both seal projections (Col 7,

Lines 12-17) for the purpose of preparing the medicine for delivery to the patient (Col 7, Lines 37-40). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Coccozza to include peripheral portions that press the capsule, as taught by Ohki et al., for the purpose of preparing the medicine for delivery to the patient (Col 7, Lines 37-40).

9. Re claim 6, Coccozza discloses that the capsule holder is configured in the manner of a drawer (that moves in and out of a recess; Col 3, Lines 65-66) having a recessed groove 15 (Fig 15) to hold the capsule, and to move forward and backward relative to a loading position of the capsule (Col 3, Lines 65-66).

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coccozza/Ohki et al. ('004) in view of Ohki et al. (US Pat 6,341,605).

11. Re claim 5, Coccozza/Ohki et al. ('004) disclose all the claimed features except that the diameter for each hole formed on each end of the capsule by the cutter is set to a size substantially identical with or larger than the diameter for the opening of each of the connection ports in communication with the hole. Ohki et al. ('605), however, teaches a substantially similar device (as seen in Fig 7) in which the diameter for each hole formed by a cutter 12 (Fig 7) is set to a size larger than the diameter for the opening of each of the connection ports 8, 15 (Fig 7) in communication with the hole (Col 6, Lines 47-51) for the purpose of controlling the flow of air through the device (Col 6, Lines 51-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Coccozza/Ohki et al. ('004) to include holes having a diameter larger than that of the connection port openings, as taught by Ohki et al.

('605), for the purpose of controlling the flow of air through the device (Col 6, Lines 51-56).

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KAMI A. BOSWORTH** whose telephone number is (571)270-5414. The examiner can normally be reached on **Monday - Thursday, 7:00 am to 4:00 pm EST**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. A. B./  
Examiner, Art Unit 3767  
/Kevin C. Simons/  
Supervisory Patent Examiner, Art Unit 3767